

MATTHEW ZIMMERMAN (CSB No. 212423)  
mattz@eff.org  
CORYNNE MCSHERRY (CSB No. 221504)  
corynne@eff.org  
ELECTRONIC FRONTIER FOUNDATION  
815 Eddy Street  
San Francisco, CA 94109  
Telephone: (415) 436-9333  
Facsimile: (415) 436-9993

DAVID HALPERIN (Admitted *Pro Hac Vice*)  
davidhalperindc@gmail.com  
3333 14th Street NW, Suite 205  
Washington, DC 20010

ANDREW P. BRIDGES (CSB No. 122761)  
abridges@fenwick.com  
JAMES J. VARELLAS III (CSB No. 253633)  
jvarellas@fenwick.com  
KATHLEEN LU (CSB No. 267032)  
klu@fenwick.com  
FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104

Attorneys for Plaintiff  
PUBLIC.RESOURCE.ORG

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

PUBLIC RESOURCE.ORG

Case No.: 3:13-cv-00815 SC

Plaintiff,

V.  
1

# SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.

**DECLARATION OF CORYNNE  
MC SHERRY IN SUPPORT OF  
PUBLIC.RESOURCE.ORG'S  
REQUEST FOR CLERK'S ENTRY OF  
DEFAULT**

## Defendant.

CORYNNE MCSHERRY DECLARATION  
IN SUPPORT OF REQUEST FOR DEFAULT  
CASE NO.: 3:13-CV-00815 SC

1 I, Corynne McSherry, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. I am an attorney licensed to practice in California and before this Court. I am  
3 Intellectual Property Director at the Electronic Frontier Foundation and counsel for Plaintiff  
4 Public.Resource.Org (“Plaintiff”). I submit this declaration in support of Plaintiff’s Request for  
5 Clerk’s Entry of Default with personal knowledge of the facts I state.

6 2. On March 1, 2013, I sent a Notice of a Lawsuit and Request to Waive Service of a  
7 Summons (the “Notice”) to Jon L. Farnsworth of the law firm of Felhaber, Larson, Fenlon &  
8 Vogt P.A., counsel for Defendant Sheet Metal and Air Conditioning Contractors’ National  
9 Association, Inc. (Dkt. No. 11.)

10 3. Mr. Farnsworth returned to me a signed Waiver of the Service of Summons, dated  
11 March 14, 2013 (the “Waiver”), which included the statement that “I also understand that I, or the  
12 entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from  
13 March 1, 2013, the date when this request was sent.” (Dkt. No. 11.)

14 4. On March 20, 2013, I filed with the Court copies of the following documents: (1)  
15 the Waiver signed by Mr. Farnsworth; (2) the Notice I sent Mr. Farnsworth; (3) the notarized  
16 Affidavit of Mailing for Mr. Farnsworth’s signed Waiver, dated March 14, 2013; and (4) the  
17 Certificate of Service for my service on Mr. Farnsworth of the Clerk’s Notice Scheduling Case  
18 Management Conference on Reassignment, the Order Reassigning Case to Judge Samuel Conti,  
19 the Notice of Impending Reassignment to a United States District Court Judge and a printout of  
20 Judge Conti’s court webpage, dated March 19, 2013. (Dkt. No. 11.)

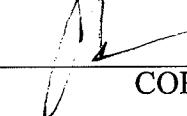
21 5. Under Rule 12 of the Federal Rules of Civil Procedure, and as noted in the Waiver  
22 signed by Mr. Farnsworth, Defendant was required to respond to Public.Resource.Org’s  
23 Complaint for Declaratory and Injunctive Relief (the “Complaint”) within 60 days of March 1,  
24 2013. Accordingly, Defendant’s deadline to respond to the Complaint was April 30, 2013. As of  
25 May 6, 2013, Defendant has not responded to the Complaint.

26 6. On May 2, 2013, I emailed Mr. Farnsworth to inquire as to whether his client  
27 intended to respond to the Complaint. On May 3, 2013, Mr. Farnsworth replied to my email and

1 advised me that "our client is not intending on filing a responsive pleading." A copy of this email  
2 exchange is Exhibit 1 to this Declaration.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 EXECUTED this 6th day of May, 2013.

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7 CORYNNE McSHERRY

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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# EXHIBIT 1

**From:** "Jon L. Farnsworth" <JFarnsworth@Felhaber.com>  
**Subject:** RE: PRO v. SMACNA [FELHABER-worksit.FID377165]  
**Date:** May 3, 2013 11:17:28 AM PDT  
**To:** Corynne McSherry <corynne@eff.org>

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1 Attachment, 10 KB

Corynne,

I appreciate your email; however, our client is not intending on filing a responsive pleading.

Jon L. Farnsworth  
Attorney  
Felhaber, Larson, Fenlon & Vogt P.A.  
[jfarnsworth@felhaber.com](mailto:jfarnsworth@felhaber.com)  
Direct: (651) 312-6013  
Fax: (651) 222-8905  
Main: (651) 222-6321  
444 Cedar Street  
Suite 2100  
St. Paul, MN 55101-2136  
[www.felhaber.com](http://www.felhaber.com)  
Twitter: <http://twitter.com/#!/JonFarnsworth>  
LinkedIn: <http://www.linkedin.com/in/jonfarnsworth>



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**From:** Corynne McSherry [mailto:corynne@eff.org]  
**Sent:** Thursday, May 02, 2013 1:35 PM  
**To:** Jon L. Farnsworth

**Cc:** Andrew Bridges; Kathleen Lu; James Varellas; David Halperin

**Subject:** PRO v. SMACNA

Dear Jon,

We were surprised that your client did not file a response to Public.Resource.Org's Complaint in the above matter on April 30 (the filing deadline noted in the docket.) We assumed there had been some logistical problem on your end, but note that there is still no response as of this morning.

Please let me know as soon as possible whether your client intends to respond and, if so, the reason for the delay. As you can imagine, my client is eager to resolve this matter promptly.

Please also meet my co-counsel for this matter, Andrew Bridges, Kathleen Lu, and James Varellas (of Fenwick & West, LLP), and David Halperin, all cc'd. I can remain your primary point of contact but if I am unavailable please feel free to reach out to them.

If your firm is no longer lead on this matter, please let me know.

Best regards,  
Corynne

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Corynne McSherry  
Intellectual Property Director, EFF  
815 Eddy Street, San Francisco, CA 94109  
415-436-9333 x 122

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